IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7244 OF 2006

Vishwa Traders Pvt. Ltd. & Anr. ..Petitioners
Vs.
Union of India & Others ..Respondents

Mr.S.N.Kantawala i/b. M/s.Apex Law Partners for the Petitioners.
Mr.B.A.Desai, Additional Solicitor General with S.V.Bharucha for the Respondents.

CORAM :- DR.S.RADHAKRISHNAN &
J.P.DEVADHAR,JJ.

DATE : 21ST FEBRUARY,2007

P.C.

1. Heard the learned Counsel for the parties. Rule. Rule is made returnable forthwith. The learned Counsel for the Respondents waives service. By consent taken up for hearing.

2. By this Petition, the Petitioners are challenging the order dated 22nd September,2006 passed by the Settlement Commission, Additional Bench, Customs and Central Excise, Mumbai, mainly on the ground of no opportunity of fair hearing was given. Unfortunately, the learned Advocate for the Petitioners could not remain present on 29th August,2006 and only the Director of the Petitioner - Company was present. The learned Counsel for the Petitioners Mr.Kantawala submitted that a specific plea was made on 23rd August,2006 requesting that the learned Counsel Mr.Willingdon, who was appearing for

the Petitioners would not be available for two weeks and hence sought two weeks adjournment. However, the Settlement Commission had granted adjournment only upto 29th August,2006 and refused further adjournment and proceeded to pass the impugned order.

3. The main grievance of the learned Counsel for the Petitioners is that the Petitioners' Counsel should have been allowed to appear and a fair opportunity of hearing ought to have been granted. The learned Counsel for the Respondents points out that earlier, the Commissioner had granted four adjournments and there is nothing erroneous in passing of the said order dated 22nd September,2006.

4. Having regard to the facts and circumstances of the case and also in view of the complexity involved in the matter, in the larger interest of justice, we feel as a last chance, the learned Counsel for the Petitioners ought to have been granted an opportunity to appear in the matter before the Settlement Commission. Under these circumstances, we quash and set aside the order dated 22nd September,2006 only on this limited ground without going into the merits and demerits of the matter, subject to condition that the Petitioners shall pay the Respondents costs quantified at Rs.25,000/-. The costs shall be paid within a period of two weeks from today.

5. It is also made clear that while deciding the above matter by the Settlement Commission, the learned Counsel for the Petitioner will not seek any adjournment whatsoever before the Settlement Commission. The Settlement Commission shall give atleast two weeks prior notice to the Petitioners with regard to the fixation of the date of hearing, and shall dispose of the Application as expeditiously as possible strictly on its own merits in accordance with law. Rule is made absolute accordingly.

(J.P.DEVADHAR,J.) **(DR.S.RADHAKRISHNAN,J.)**